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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Advanced Television Systems )  
and Their Impact upon the )  
Existing Television Broadcast )  
Service )

MM Docket No. 87-268

**REPLY COMMENTS OF THE WB TELEVISION NETWORK**

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The WB Television Network ("The WB") submits these Reply Comments in response to the comments filed in the above-captioned proceeding.

**INTRODUCTION**

The WB, launched in January 1995, has increased broadcast diversity by providing viewers an alternative to the programming found on the established national television networks. For example, The WB has championed a return to family programming during the 8:00 - 9:00 p.m. hour, a programming choice that the established networks largely have abandoned. The WB's efforts to grow from a nascent network into an established network have been seriously hampered, however, by the lack of full power stations in many markets that are available for affiliation.<sup>1</sup> Because of this paucity of stations, The WB, like other incipient networks, has been forced to augment its network of full

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<sup>1</sup> As The WB explained in its initial comments, a network must achieve an audience reach of at least 80 percent of the country in order to be a viable national network. *See* Comments of The WB Television Network at 1 & n.2 ("The WB Comments").

power stations with a less than satisfactory and ultimately unsustainable patchwork of secondary affiliations, low power stations, and cable carriage to obtain even minimal coverage in the remaining markets. To succeed in the long run, The WB must have a sufficient number of full power, over-the-air TV affiliates that run The WB programming in pattern.<sup>2</sup>

The Commission can foster the development of new networks, and thereby serve the public interest, by supporting the creation of new full power TV stations in markets that lack unaffiliated stations. However unwittingly, the Commission's DTV plan, as set forth in the Sixth Further Notice of Proposed Rulemaking, does just the opposite. As The WB explained in its comments filed earlier in this proceeding, the Commission's proposals to limit DTV channels to the core spectrum (channels 7-51) and to reallocate immediately channels 60-69 will necessarily come at the price of limiting the number of channels (both NTSC and DTV) that are available for new television stations -- stations that are needed to form the backbone of a nascent network like The WB.<sup>3</sup> The WB therefore agrees with the multitude of commenters that have urged the Commission to reject -- at least during the DTV transition period -- the core spectrum approach.

In addition, The WB agrees with those commenters who urge the Commission to utilize the broadcast spectrum more efficiently. To this end, the Commission should eliminate the outdated and unnecessary UHF taboos. In addition, the Commission should

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<sup>2</sup> To this end, The WB is seeking a full power, over-the-air affiliate in each of the top 100 markets. The soon-to-be-launched WeB, which will use cable channels as affiliates in markets in which The WB has no TV affiliate, will be used in markets 101 and higher.

<sup>3</sup> The WB Comments at 5-6.

allot to broadcasters only as much spectrum as they need for their operation (DTV or NTSC). Such efficiencies will result in more available spectrum that could -- and should -- be used to establish new stations with which nascent networks can affiliate.

Finally, The WB urges the Commission to reject the suggestion of a few parties that the Commission delete all vacant NTSC channels, rather than acting on the pending applications and rulemakings for new NTSC stations. If new networks are to survive, they must acquire additional affiliates now. Accordingly, the Commission should not delete the vacant NTSC channels for which there are applications on file.

**I. THE COMMISSION SHOULD REJECT ITS CORE SPECTRUM PROPOSAL AND INSTEAD DELAY SPECTRUM RECOVERY UNTIL AFTER THE TRANSITION TO DTV**

Numerous commenters -- including the incumbent broadcasters -- attest to why the Commission's core spectrum proposal is ill-advised.<sup>4</sup> The commenters point to a number of undesirable consequences of the core spectrum proposal. The broadcasters, for example, state that the core proposal "unnecessarily damages the public's present NTSC service and handicaps its future DTV service."<sup>5</sup> The Community Broadcasters Association ("CBA"), the trade association of LPTV operators, states that the core spectrum proposal could destroy hundreds of LPTV stations.<sup>6</sup> The Association of

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<sup>4</sup> See, e.g., Broadcasters' Comments on the Sixth Notice of Proposed Rulemaking at 24-39 ("Broadcasters' Comments"); Comments of the Association of America's Public Television Stations and the Public Broadcasting Service at 12-18 ("Public Television Comments"); Comments of the Community Broadcasters Association at 10-11 ("CBA Comments").

<sup>5</sup> Broadcasters' Comments at 24.

<sup>6</sup> CBA Comments at 1.

America's Public Television Stations and the Public Broadcasting Service (collectively, "Public Television") state that the core spectrum proposal, among other things, will result in the deletion of noncommercial allotments.<sup>7</sup> For these manifold reasons, the commenters urge the Commission to reject the core spectrum proposal and to utilize the entire broadcast spectrum during the transition to DTV.<sup>8</sup>

The WB agrees that the Commission should abandon the core spectrum proposal and instead make full use of all of the broadcast spectrum during this transition period. The core spectrum proposal is potentially fatal to new networks like The WB that must find affiliates in markets that would lose their allotments under the Commission's proposal. The core spectrum proposal would reduce not only the number of NTSC channels by deleting vacant channel allotments, it would also reduce the number of DTV channels by limiting the availability of such channels to "eligible" broadcasters, which are defined to exclude broadcasters that currently have pending applications.

In its comments, the California Department of General Services, Telecommunications Division suggests that there is no longer any need for additional television stations given the growth of alternative video distribution methods such as DBS and cable.<sup>9</sup> The Commission should summarily reject this suggestion. As The WB explained in its initial comments, new stations represent greater broadcast diversity both

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<sup>7</sup> Public Television Comments at 18.

<sup>8</sup> See, e.g., Public Television Comments at 19; CBA Comments at 10-11; Broadcasters' Comments at 24-39.

<sup>9</sup> Comments of the California Department of General Services, Telecommunications Division at 5.

on a local basis through the addition of another station, and on a national basis through the formation of nascent networks such as The WB.<sup>10</sup> DBS has a nationwide footprint and therefore does not support the distribution of local programming. Moreover, neither DBS nor cable adds to the diversity of programming available to the one-third of the population that subscribes to neither of these services. The Commission has never limited its goal of increased diversity to the “haves” rather than the “have nots,” and it should not do so here.

Because spectrum demand will be the greatest during the transition period, it simply makes no sense for the Commission to reduce the amount of available spectrum during that period. Accordingly, rather than adopt the core spectrum proposal, the Commission should, as The WB and others have suggested, delay making a decision with respect to spectrum recovery until *after* the transition to DTV is complete.<sup>11</sup> In addition, the Commission should delay spectrum recovery until after the pending applications and rulemakings for new NTSC stations have been processed. This delay will allow the Commission to achieve its goal of encouraging new over-the-air networks, as well as its goal of recovering spectrum for other uses, without sacrificing one goal for the other.

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<sup>10</sup> See The WB Comments at 4-5.

<sup>11</sup> See *id.* at 6.

## **II. THE COMMISSION SHOULD ADOPT A DTV PLAN THAT MAKES EFFICIENT USE OF THE BROADCAST SPECTRUM**

A number of commenters note that there are ways in which the broadcast spectrum can be utilized more efficiently.<sup>12</sup> The WB supports more efficient use of the spectrum because such efficient use could -- and, for the reasons discussed above, should -- result in more spectrum being available for new stations with which nascent networks such as The WB can affiliate. There are a variety of ways to utilize the spectrum more efficiently.

As we urged in our initial comments, the Commission should eliminate unnecessary UHF taboos.<sup>13</sup> This suggestion was echoed by other commenters such as CBA and Trinity Broadcasting Network ("Trinity").<sup>14</sup> As CBA correctly points out, these taboos are likely unwarranted given today's technology.<sup>15</sup> But while CBA and Trinity urge the Commission to eliminate the taboos with respect to LPTV operations, The WB urges the Commission to eliminate all unnecessary UHF taboos in their entirety. The continued application of unnecessary taboos serves simply to perpetuate the inefficient use of the spectrum for broadcast purposes.

In addition, the Commission can promote more efficient use of the spectrum by giving broadcasters only as much spectrum as they need. As NCTA and Media Access

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<sup>12</sup> See, e.g., Comments of the National Cable Television Association, Inc. at 7-8 ("NCTA Comments"); CBA Comments at 11-14.

<sup>13</sup> See The WB Comments at 12.

<sup>14</sup> CBA Comments at 13 and Technical Exhibit at Section II; Supplemental Comments of the Trinity Broadcasting Network at 4 and Engineering Statement at 3.

<sup>15</sup> CBA Comments at 13.

Project point out, an additional 6 MHz grant of spectrum may be totally unnecessary if a broadcaster does not intend to provide an HDTV digital channel.<sup>16</sup>

The WB agrees with NCTA that a broadcaster should not be given more spectrum than the broadcaster ultimately needs to provide either one HDTV digital channel or one DTV channel without HDTV.<sup>17</sup> Rather than allowing broadcasters to purchase the unused spectrum or auctioning that spectrum, as NCTA suggests, however,<sup>18</sup> The WB urges the Commission to promote the establishment of new networks by utilizing the unused portion of the spectrum for new channels -- whether NTSC, DTV, or both.

Only after all broadcast needs are satisfied should the Commission look to recapture any unused spectrum for reallocation to another service. By using -- and allotting -- spectrum efficiently, the Commission can achieve its twin goals of allowing broadcasters to transition to digital television and increasing diversity by nurturing the establishment of new networks.

### **III. THE COMMISSION SHOULD NOT DELETE VACANT NTSC CHANNELS FOR WHICH THERE ARE APPLICATIONS ON FILE**

Public Television urges the Commission not to adopt the agency's proposal to delete vacant noncommercial channels.<sup>19</sup> Public Television notes that the proposal is contrary to the public interest in that it could result in communities losing the opportunity

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<sup>16</sup> NCTA Comments at 7; Comments of Media Access Project at 7 & n.5.

<sup>17</sup> See NCTA Comments at 8. More spectrum is required to broadcast HDTV programming than other forms of digital programming.

<sup>18</sup> *Id.* at 8-9.

<sup>19</sup> Public Television Comments at 21.



for their first public television station.<sup>20</sup> Public Television's point is valid and is equally applicable in the commercial context. As The WB stated in its earlier comments, many of the pending applications for new television stations would, if granted, provide smaller communities with their first commercial broadcast television station.<sup>21</sup> By deleting vacant NTSC channels, the Commission's proposal would decrease the likelihood that these applications for first television stations in small communities would be granted. Because each of these pending applications represents a potential affiliate for a new network, the Commission's proposal also hinders the development of new networks. Accordingly, the Commission should reject its proposal to delete vacant NTSC channels.

In addition, the Commission should reject the arguments of those commenters such as Chris-Craft/United Group and CBA that the agency should delay processing pending applications and rulemakings until after the transition to DTV is complete.<sup>22</sup> As noted above and in The WB's previous comments, new networks have an acute need for additional affiliates now. Any lengthy delay in the establishment of new stations could result in the demise of one or more of these nascent networks. The WB urges the

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<sup>20</sup> *Id.* at 22-23.

<sup>21</sup> Providing at least one local television broadcast station to every community was one of the overarching priorities in allotting television channels. *See Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations, (Modesto and Ceres, California)*, 6 FCC Rcd 3613 (1991).

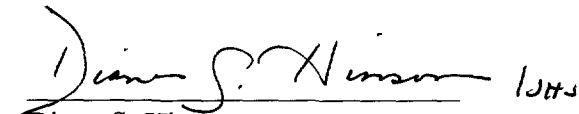
<sup>22</sup> Comments of Chris-Craft/United Group at 7; *see* CBA Comments at 18. Chris-Craft/United Group asks that the Commission delay processing pending petitions for rulemaking. Unlike CBA, however, Chris-Craft/United Group does not seek a similar delay with respect to pending applications for allotted channels, presumably because its affiliate, United Television, has several such pending applications.

Commission not to sacrifice the greater broadcast diversity represented by nascent networks at the alter of DTV.

### CONCLUSION

For the reasons set forth above and in our earlier comments, The WB urges the Commission to (1) reject its core spectrum proposal and instead delay spectrum recovery until after the transition to DTV; (2) adopt a DTV plan that makes more efficient use of the spectrum; (3) reject its proposal to delete vacant NTSC channels; and (4) rule on all pending applications and rulemakings for new NTSC stations without awaiting resolution of the DTV transition. These actions will promote the public interest in greater broadcast diversity by nurturing the development of new networks such as The WB.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Diane S. Hinson", followed by the initials "JHS" to the right.

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